

REMARKS

Claims 1-45, 47 and 49-60 are pending. Claims 1-34, 37-45, and 51-60 were previously withdrawn from consideration. By virtue of this response, claims 35 and 49 have been amended. Support for these amendments may be found throughout the specification as originally filed, for example in FIGS. 5A-5D and 6-8, and the paragraphs corresponding thereto. Claim 50 has been cancelled, and no new claims have been added. Accordingly, claims 35, 36, 47, and 49 are currently under consideration. Amendment and cancellation of certain claims is not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented.

Substance of Examiner Interview

Applicants thank Examiner Dowe for extending the courtesy of an in-person interview, which was had on November 20, 2009 with Applicants' representatives, Niel Starksen, Felissa Cagan, and Mika Mayer. During that interview, independent claim 35 and the cited references were discussed. Specifically, a proposed amendment to independent claim 35 was discussed. The proposed amendment included limitations that specified that the at least one tethered anchor has an eyelet, and that the device comprises a pivot mandrel releasably coupling the at least one tethered anchor to the housing through the eyelet, where the at least one anchor is rotatable about the longitudinal axis of the pivot mandrel while the at least one anchor is releasably coupled to the pivot mandrel. The proposed amendment also included a limitation where the device further comprises a balloon, wherein expansion of the balloon causes the at least one tethered anchor to rotate about the longitudinal axis of the pivot mandrel. Examiner Dowe agreed that the proposed amendment would render the claims allowable over the art of record. The proposed amendment has been incorporated into independent claim 35 as detailed above and discussed below

Claim Rejections under 35 U.S.C §112

Claims 35, 36, 47, and 49 stand rejected under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description requirement and the enablement requirement. Claims

35, 36, 47, and 49 also stand rejected under 35 U.S.C. 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner previously stated that the limitation “wherein the side wall has at least one aperture disposed longitudinally therein the aperture having a first opening and a second opening, and wherein when the device is in the first configuration the aperture retains a mandrel therein” fails to comply with the aforementioned requirements of 35 U.S.C. §112, first and second paragraphs. While Applicants do not concede that this limitation fails to comply with 35 U.S.C. §112, applicants have nevertheless amended claim 1 to remove this limitation in order to expedite prosecution of this application. Accordingly, Applicants respectfully request that the rejections of claims 35, 36, 47, and 49 under 35 U.S.C. §112, first and second paragraphs, be withdrawn.

Claim Rejections under 35 U.S.C §102(b)

Claims 35, 36, 47, and 49 stand rejected under 35 U.S.C. §102(b) as allegedly anticipated by U.S. Pat. No. 5,810,848 to Hayhurst (“Hayhurst”). Independent claim 35, from which claims 36, 47, and 49 depend, has been amended to recite “an elongate body having a proximal end and a distal end and a housing at the distal end of the elongate body; at least one tethered anchor, the anchor having an eyelet; a pivot mandrel releasably coupling the at least one tethered anchor to the housing through the eyelet, wherein the at least one anchor is rotatable about the longitudinal axis of the pivot mandrel while the at least one anchor is releasably coupled to the pivot mandrel; and a balloon, wherein expansion of the balloon causes the at least one tethered anchor to rotate about the longitudinal axis of the pivot mandrel.”

As discussed during the in-person interview, and agreed to by the Examiners, Hayhurst fails to teach, disclose, or even suggest the device of instant claim 35. Accordingly, Applicants respectfully request that the rejection of claims 35, 36, 47, and 48 under 35 U.S.C. §102(b) be withdrawn.

Claim Rejections under 35 U.S.C. §103(a)

Claim 50 stands rejected under 35 U.S.C. 103(a) as allegedly unpatentable over Hayhurst in view of U.S. Pat. No. 3,727,614 to Kniazuk (“Kniazuk”). By virtue of this amendment, claim 50 has been canceled, thereby rendering this rejection moot. Regardless, as discussed during the in-person interview, and agreed to by the Examiners, Hayhurst, the primary reference used in support of the obviousness rejection, fails to teach, disclose, or even suggest the device of instant claim 35. Kniazuk fails to cure this deficiency. Accordingly, Applicants respectfully request that all remaining rejections be withdrawn.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

Any remarks in support of patentability of one claim should not be imputed to any other claim, even if similar terminology is used. Additionally, any remarks referring to only a portion of a claim should not be understood to base patentability on that portion; rather, patentability must rest on each claim taken as a whole. Applicants respectfully traverses each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches, even if not expressly discussed herein. Although amendments have been made, no acquiescence or estoppel is or should be implied thereby. Rather, the amendments are made only to expedite prosecution of the present application, and without prejudice to presentation or assertion, in the future, of claims on the subject matter affected thereby.

Although the present communication includes alterations to one or more claims, or characterizations of claim scope or referenced art, Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child, or related prosecution history shall not reasonably infer that Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

In the event the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and

authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no.

578492001500. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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